The New York Times

NEW YORK, SUNDAY, JULY 22, 2001

MARKET WATCH

GRETCHEN MORGENSON

Shareholders Are Restless, and Starting to Pounce

THE proxy season is mostly over. Smoke from boardroom battles is clearing. What do the results mean for investors and top executives?

The loudest message coming through from shareholders this year is a storm warning. Managements with records of anti-investor practices had better watch their step. The days of sunny shareholder complacency - or merely vocal complaints - are over.

Much of the shareholder ire raining down on the executive suite today is a result of the stock market's decline. When stock prices were levitating and investors were reaping gains, even managers behaving badly were forgiven. Now, however, investors are losing money, and forgiveness is out of favor.

According to the Investor Responsibility Research Center in Washington, which tracks 4,000 companies, 12 proxy contests for board seats were started through June 30. In all of 2000, seven companies experienced proxy battles. The contests this year are expected to exceed the 16 that took place in 1999.

But what's different - and encouraging - this year is the success rate among investors in their battles for board seats.

Scott A. Fenn, executive director of the center, said 70 percent of the proxy fights decided this year had given partial or total victory to dissidents. Since 1992, Mr. Fenn said, insurgents have never won more than one-third of the battles.

The investor triumphs are all the more extraordinary given that companies are creating increasingly sophisticated takeover defenses, Mr. Fenn said.

Managements lost this year at, among other companies, the **Alltrista** Corporation, a maker of plastic and metal products; **ICN Pharmaceuticals; Lone Star Steakhouse and Saloon;** and **Suburban Lodges of America,** a hotel chain.

Guy W. Adams

Perhaps the most unusual management loss was at Lone Star. Guy Adams, an independent financial analyst and small investor, wrested a board seat at the company from its chairman and founder, Jamie Coulter. Mr. Adams held only 1,100 shares of stock in the company and had little to spend on the proxy fight. Nevertheless, Mr. Adams said, not counting the shares voted by Lone Star management, he received approximately two of every three votes cast.

Mr. Adams's victory is indicative of what could be called the democratization of proxy fights, Mr. Fenn said. "Used to be, a huge ante was required to mount a successful proxy fight," he said. "Now it's at least possible for an investor to go into this with peanuts and get institutional support."

The Internet is also helping insurgents marshal resources or support. In a contested election at **Luby's** Inc., a cafeteria chain, two dissidents said they had decided to wage the fight after communicating in a chat room. Neither won a seat on the board, but together they won the votes of 6.6 million shares, 15 percent of those voted. Mr. Fenn said they had spent just $15,000 on their battle.

Of course, proxy fights happen mainly because investors are disappointed in the performance of the company's stock price. And in a desultory year for stocks, the 10 stocks that were the subject of resolved proxy fights rose 12 percent, on average, from the day of the insurgents' announcements until the day of the shareholder meetings - a sign that potential change has been good for these stocks.

Clearly, dissidents in proxy battles are receiving more support from institutional shareholders than they have in the past. Now it's time for corporate executives to get the hint. "The take-away message is corporations have to be more sensitive to this stuff," Mr. Fenn said. "They can't take it for granted that they are going to win all these things."

The New York Times

NEW YORK, SUNDAY, JUNE 24, 2001

MARKET WATCH

GRETCHEN MORGENSON

An All-He-Can Eat Feast at a Steakhouse Chain

FOR the shareholders of **Lone Star Steakhouse and Saloon**, there has been a lot more fizzle than sizzle lately. During the biggest bull market in history, the stock of Lone Star, the Wichita restaurant chain, only sank. A shareholder who invested $100 in the stock in December 1995 had $22.08 at the end of 2000. The Standard & Poor's restaurant index rose almost 52 percent during the period.

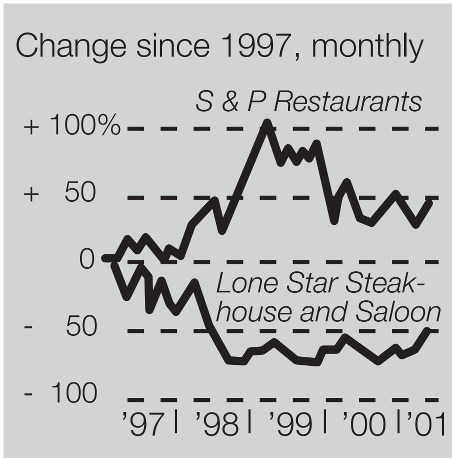
Despite a sizable stock buyback program, per-share earnings at Lone Star fell 15 percent last year. Its stock, now at $12.89, trades 29 percent below its book value.

One might expect Lone Star management to make nice to its shareholders. Instead, it is poking them in the eye with a cattle prod.

Last year, the company more than tripled the salary and bonus of Jamie B. Coulter, the chairman, to $977,000. Six months ago, Lone Star forged a contract with Mr. Coulter that gives him a payment equal to 2.99 times one year's annual compensation if there is a change in control at the company.

Lone Star has also been a serial repricer of its stock options, most of which are held by its top executives. In 1997, it reduced to $18.25 the price of options that had ranged from $19 to $32.63. Two years later it repriced options of outside directors, and in 2000 it reduced the exercise price on all outstanding options to $8.47. Mr. Coulter holds options covering 2.6 million shares, accounting for 52 percent of his Lone Star holdings.

But even these excesses pale in comparison with the company's over-the-top



response to the candidacy of Guy W. Adams, 50, a Lone Star investor of modest means who is running for an open board seat at the company's annual meeting on July 6.

Last February, Mr. Adams, an independent analyst in Los Angeles, filed proxy materials about the board seat. Two months later, Lone Star sued him, contending that because he had filed misleading proxy materials he should be prohibited from voting any proxies. But a judge ruled Friday that Mr. Adams could proceed after correcting two errors.

In pursuing the suit, Lone Star obtained Mr. Adams's bank, brokerage and phone records, combed through court proceedings in his 1999 divorce and sought to depose his landlord.

Hardball tactics are de rigueur in corporate America. But another Lone Star move is unusual: its subpoena and deposition of Ted White, corporate governance director at the California Public Employees' Retirement System, known as Calpers, owner of 372,000 Lone Star shares. Calpers said the company had one of the five worst boards of those in its portfolio. In the deposition, Mr. White said the fund would support Mr. Adams.

Lone Star said deposing Mr. White was necessary to determine whether Mr. Adams, who owns 1,100 shares, was a stalking horse for the investment fund. Mr. White denies this. "Their response to his candidacy was shameful," he said. "It's fairly telling that an entrenched board feels the need to protect itself with intense litigation."

Mr. Adams declined to comment, but said in court filings that the lawsuit looked like an attempt by the company to use litigation to prevent stockholders from being given a choice of candidates for the board seat.

Other investors agree. And the New York Society of Security Analysts' Committee for Corporate Governance is sponsoring a forum on Lone Star, said Gary Lutin, head of Lutin & Company in New York.

A spokesman for Lone Star said it was committed to shareholder value and that it would not reprice options for executives without a stockholder vote. The company is turning around, he said, and the stock, up 34 percent this year, reflects it.

But that climb could also mean that investors think the Lone Star board's days may be numbered. If that perception becomes a reality, it will come not a moment too soon. □